



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,912	10/12/2004	Mark Viklund	7298.098.NPUS02	5911
28694 7590 05/21/2009 NOVAK DRUCE + QUIGG LLP 1300 EYE STREET NW SUITE 1000 WEST TOWER WASHINGTON, DC 20005			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 05/21/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/711,912	Applicant(s) VIKLUND ET AL.	
	Examiner JUSTIN M. LARSON	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-13, 17, 18 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-13, 17, 18 and 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/20/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action contains new grounds of rejection not necessitated by Applicant's amendments, thereby making this third action **NON-FINAL**.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 3/20/09 is noted. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the examiner is considering the information disclosure statement.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-13, 17, 18, 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Performance (Performance, XPORT Xcess Cargo Box, 5/4/03) in view of Hirtsiefer (US 5,546,705 A), further in view of Jones (US 2,656,563 A).

Regarding claim 13, Performance discloses a vehicular mountable cargo container comprising: a top portion hinge-connected to a bottom portion as claimed (Figure 1); and a pair of spring-biased struts interposed between the top and bottom portions (Figure 2), configured to exclusively deliver an assisting expansion force between the top and bottom portions (inherent nature of the design, as supported by Attach Spring Struts to Lid step #2). Performance fails to disclose each spring-biased

Art Unit: 3782

strut comprising a cam surface as claimed; and a force communication point as claimed.

Hirtsiefer, however, also discloses a cargo container spring-biased strut (5) and teaches that it is known for such a strut to utilize a cam surface and force communication point between its arms in order to control the motion of the container's top portion relative to the bottom portion. Jones also discloses a spring-biased strut for controlling the movement of a container lid and teaches that the strut utilizes a cam surface and force communication point in order to control the motion of the lid. Jones teaches (Figure 1) that a force communication point of the strut remains exclusively on one side of a line (32) oriented parallel to a direction of an operationally effected force imposed by the biasing spring (14) between the two arms (12 and 10/11/13/16) and intersecting a pivot connection (20) between the arms in order to provide a unidirectional force that constantly counterbalances the lid. Jones also teaches that the shape of the cam surface and the spring force can be varied to alter the counterbalancing effect of the strut (col. 4 lines 48-53).

First, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the Performance strut with a strut utilizing a cam surface and force communication point, as taught by Hirtsiefer, as a mere substitution of known vehicle-mounted cargo container struts. Second, given Jones' disclosure of ways to alter the counterbalancing effect of a strut, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified Performance container strut arms with cam surface (like 18

Art Unit: 3782

of Jones) and spring surface (like 17 of Jones) together defining a single-side force communication point, as taught by Jones, in order to provide a unidirectional force and to increase the spring force in order to provide an assisting expansion force helping a user to open the top portion, as originally suggested by Performance.

Regarding claims 9 and 10, the struts of the modified Performance container are configured to avoid/prevent delivering a closing force between the top and bottom portions as claimed.

Regarding claims 11 and 12, the struts of the modified Performance container are configured to perform in substantial unison as claimed.

Regarding claims 20, 21 and 23, the method steps as claimed are satisfied during the normal operation and use of the modified Performance container. Examiner notes that the cam surface of Jones, which has been applied to the modified Performance carrier, includes two delimiters (22,22a) as claimed.

Regarding claims 17 and 18, the method steps as claimed are satisfied during the normal operation and use of the modified Performance container. Examiner notes that the expansively directed force is controlled as claimed. The cam surface of the modified Performance container resembles that of Jones, where that of Jones (Figure 1) is configured like that of the present invention (Figures 5 and 7). When in the open position, both have a thinner cam surface engaging an uncompressed spring. When in the closed position, both have a thicker cam surface engaging a compressed spring. It follows that the forces applied between the spring and cam surfaces are similar.

Regarding claims 22 and 24, the method steps as claimed are satisfied during the normal operation and use of the modified Performance container. Examiner notes that the struts of the modified Performance container include a body (within the arms) that houses the cam surface (slider) and spring.

Regarding claim 25, the method steps as claimed are satisfied during the normal operation and use of the modified Performance container. Examiner notes that the struts of the modified Performance container include a line oriented as claimed, as taught by Jones (32).

Regarding claim 26, the method steps as claimed are satisfied during the normal operation and use of the modified Performance container. Examiner notes that the operationally effective force imposed by the spring between the two arms is inherently a summation of a plurality of vector forces.

Regarding claims 27-29, the method steps as claimed are satisfied during the normal operation and use of the modified Performance container. Examiner notes that the struts are configured as claimed.

5. Claims 9-13, 17, 18, 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Uchiumi (JP 11291832 A) in view of Parker (US 3,640,423 A), further in view of Hirtsiefer (US 5,546,705 A) and Jones (US 2,656,563 A).

Regarding claim 13, Uchiumi discloses a vehicular mountable cargo container comprising: a top portion (1) hinge-connected to a bottom portion (3) as claimed; and a spring-biased strut (10) interposed between the top and bottom portions (Figure 1), configured to exclusively deliver an assisting expansion force (due to compression

Art Unit: 3782

spring 12) between the top and bottom portions. Uchiumi fails to disclose a pair of struts, each spring-biased strut comprising a cam surface as claimed; and a force communication point as claimed.

Regarding the number of struts, Parker discloses a related container and teaches that two spring-biased struts (90,91) are used to control movement of the container lid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided Uchiumi with two struts, as taught by Parker, in order to better support the lid.

Regarding the details of the struts, Hirtsiefer, also discloses a cargo container spring-biased strut (5) and teaches that it is known for such a strut to utilize a cam surface and force communication point between its arms in order to control the motion of the container's top portion relative to the bottom portion. Jones also discloses a spring-biased strut for controlling the movement of a container lid and teaches that the strut utilizes a cam surface and force communication point in order to control the motion of the lid. Jones teaches (Figure 1) that a force communication point of the strut remains exclusively on one side of a line (32) oriented parallel to a direction of an operationally effected force imposed by the biasing spring (14) between the two arms (12 and 10/11/13/16) and intersecting a pivot connection (20) between the arms in order to provide a unidirectional force that constantly counterbalances the lid. Jones also teaches that the shape of the cam surface and the spring force can be varied to alter the counterbalancing effect of the strut (col. 4 lines 48-53).

First, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have replaced the Uchiumi strut with a strut utilizing a cam surface and force communication point, as taught by Hirtsiefer, as a mere substitution of known vehicle-mounted cargo container struts. Second, given Jones' disclosure of ways to alter the counterbalancing effect of a strut, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified Uchiumi container strut arms with cam surface (like 18 of Jones) and spring surface (like 17 of Jones) together defining a single-side force communication point, as taught by Jones, in order to provide a unidirectional force and to increase the spring force in order to provide an assisting expansion force helping a user to open the top portion, as originally suggested by Uchiumi.

Regarding claims 9 and 10, the struts of the modified Uchiumi container are configured to avoid/prevent delivering a closing force between the top and bottom portions as claimed.

Regarding claims 11 and 12, the struts of the modified Uchiumi container are configured to perform in substantial unison as claimed.

Regarding claims 20, 21 and 23, the method steps as claimed are satisfied during the normal operation and use of the modified Uchiumi container. Examiner notes that the cam surface of Jones, which has been applied to the modified Uchiumi carrier, includes two delimiters (22,22a) as claimed.

Regarding claims 17 and 18, the method steps as claimed are satisfied during the normal operation and use of the modified Uchiumi container. Examiner notes that

Art Unit: 3782

the expansively directed force is controlled as claimed. The cam surface of the modified Uchiumi container resembles that of Jones, where that of Jones (Figure 1) is configured like that of the present invention (Figures 5 and 7). When in the open position, both have a thinner cam surface engaging an uncompressed spring. When in the closed position, both have a thicker cam surface engaging a compressed spring. It follows that the forces applied between the spring and cam surfaces are similar.

Regarding claims 22 and 24, the method steps as claimed are satisfied during the normal operation and use of the modified Uchiumi container. Examiner notes that the struts of the modified Uchiumi container include a body (within the arms) that houses the cam surface (slider) and spring.

Regarding claim 25, the method steps as claimed are satisfied during the normal operation and use of the modified Uchiumi container. Examiner notes that the struts of the modified Uchiumi container include a line oriented as claimed, as taught by Jones (32).

Regarding claim 26, the method steps as claimed are satisfied during the normal operation and use of the modified Uchiumi container. Examiner notes that the operationally effective force imposed by the spring between the two arms is inherently a summation of a plurality of vector forces.

Regarding claims 27-29, the method steps as claimed are satisfied during the normal operation and use of the modified Uchiumi container. Examiner notes that the struts are configured as claimed.

Response to Arguments

6. Applicant's arguments filed 2/16/09, with respect to Hirtsiefer being applied as a primary reference (and disclosing a closing force that would be destroyed by the teachings of Jones) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Performance and Uchiumi. Neither of these references are concerned with a closing force and are thus properly combinable with the teachings of Jones, where Hirtsiefer is used only as motivation for looking to cam-type struts.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited art includes related cargo containers and related struts.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN M. LARSON whose telephone number is (571)272-8649. The examiner can normally be reached on Monday-Friday, 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 3782

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justin M Larson/
Examiner, Art Unit 3782
5/19/09